SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 954

THE UNITED STATES OF AMERICA, APPELLANT

vs.

JAMES C. PETRILLO

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

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1 [Caption omitted.]

2 In the District Court of the United States for the Northern District of Illinois, Eastern Division

No. 46-CR-357, Vio.: Section 506, Federal Communications Act of 1934, as Amended

UNITED STATES OF AMERICA

vs.

JAMES C. PETRILLO

Criminal information

Filed June 13, 1946

The United States Attorney charges:

That at all times mentioned herein the Drovers Journal Publishing Company, Inc. (hereinafter referred to as the Licensee), was an Illinois corporation and the owner and operator of a licensed radio broadcasting station known as Radio Station WAAF, located in Chicago, Illinois.

That for several years last past up to, on or about, May 28, 1946, in connection with the operation of its radio broadcasting facilities, the licensee employed certain persons who were sufficient and adequate in number to perform all of the actual services needed by said licensee in connection with the conduct of its broadcasting business.

That notwithstanding the premises aforesaid, one James C. Petrillo, President of the Chicago Federation of Musicians, on or about May 28, 1946, at Chicago, Illinois, wilfully, by the use of force, intimidation, duress and by the use of other means, did attempt to coerce, compel and constrain said licensee to employ and agree to employ, in connection with the conduct of its radio broadcasting business, three additional persons not needed by said licensee to perform actual services, in the following manner, to wit:

3 (1) By directing and causing three musicians, members of the Chicago Federation of Musicians, theretofore employed by the said licensee in connection with the conduct of its broadcasting business, to discontinue their employment with said licensee;

(2) By directing and causing said three employees and other persons, members of the Chicago Federation of Musicians, not to accept employment by said licensee; and,

(3) By placing and causing to be placed a person as a picket in front of the place of business of said licensee.

J. Albert Woll,
J. ALBERT WOLL,
United States Attorney.

4 NORTHERN DISTRICT OF ILLINOIS,
Eastern Division, ss:

Wm. J. Connor, being first duly sworn, on his oath, deposes and says that the facts stated in the foregoing Information are true.

WM. J. CONNOR.

Subscribed and sworn to before me this 13th day of June A. D. 1946.

[SEAL] ISADORE KASTEL,
Deputy Clerk of the District Court of the United States for the Northern District of Illinois, Eastern Division.

5 In the District Court of the United States

Motion to dismiss the information

Filed July 5, 1946

The defendant moves that the Information be dismissed on the following grounds:

The information does not state facts sufficient to constitute an offense against the United States because it purports to charge a violation of Section 506 of Title V of the Communications Act of 1934, as Amended, approved April 16, 1946, Public Law No. 344, 79th Congress, Second Session, which

(a) contravenes the First Amendment to the Constitution of the United States in that it abridges freedom of speech;

(b) is repugnant to the Fifth Amendment to the Constitution of the United States, and particularly the due process clause thereof, in that it defines a crime in terms that are excessively vague, in that it denies equal protection of the law and in that it denies liberty of contract;

(c) violates the Thirteenth Amendment to the Constitution of the United States in that it imposes involuntary servitude;

(d) is contrary to the Tenth Amendment to the Constitution of the United States in that it is a Congressional exercise of power not delegated to the United States by the Constitution.

Dated July 15, 1946.

Jos. A. Padway,
JOSEPH A. PADWAY,
736 Bowen Bldg., Washington, D. C.,
Henry Kaiser,
HENRY KAISER,
736 Bowen Bldg., Washington, D. C.,
Henry A. Friedman, by Jos. A. Padway,
HENRY A. FRIEDMAN,
521 Fifth Ave., New York, N. Y.,
David Katz,
DAVID KATZ,
175 W. Washington St., Chicago, Ill., State 0063,
Counsel for the Defendant.

6 In the District Court of the United States for the Northern District of Illinois, Eastern Division

No. 46 CR 357

UNITED STATES OF AMERICA

vs.

JAMES C. PETRILLO

Opinion

DECEMBER 2, 1946.

The information filed herein charges a violation of Section 506 of the Federal Communications Act of 1934, as amended. It charges that the licensee of radio station WAAF, located in Chicago, Illinois, for several years to on or about May 28, 1946, employed certain persons who were sufficient and adequate in number to perform all of the actual services needed by said licensee in connection with the operation of its radio broadcasting facilities; that notwithstanding the premises, the defendant, James C. Petrillo, President of the Chicago Federation of Musicians, on or about May 28, 1946, at Chicago, Illinois, wilfully by the use of force, intimidation, duress and by the use of other means, did attempt to coerce, compel and constrain said licensee to employ and agree to employ in connection with the conduct of its radio broadcasting business, three additional persons not needed by said licensee to perform actual services, in the following manner, to-wit:

(1) By directing and causing three musicians, members of the Chicago Federation of Musicians, theretofore employed by the said licensee in connection with the conduct of its broadcasting business, to discontinue their employment with said licensee;

(2) By directing and causing said three employees and other persons, members of the Chicago Federation of Musicians, not to accept employment by said licensee; and

(3) By placing and causing to be placed a person as a picket in front of the place of business of said licensee.

The information, therefore, charges that coercive practices employed by the defendant were only with reference to subsection (a) (1) of Section 506. The pertinent portion of the section is as follows:

"SEC. 506. (a) It shall be unlawful, by the use of express or implied threat of the use of force, violence, intimidation, or duress, or by the use of express or implied threat of the use of other means, to coerce, compel or constrain or attempt to coerce, compel or constrain a licensee—

"(1) to employ or agree to employ, in connection with the conduct of the broadcasting business of such licensee, any person or persons in excess of the number of employees needed by such licensee to perform actual services.

* * * * *

"(c) The provisions of subsection (a) of this section shall not be held to make unlawful the enforcement or attempted enforcement, by means lawfully employed, of any contract right heretofore or hereafter existing or of any legal obligation heretofore or hereafter incurred or assumed.

"(d) Whoever wilfully violates any provision of subsection (a) or (b) of this section shall, upon conviction thereof, be punished by an imprisonment for not more than one year or by a fine of not more than $1,000, or both."

7 The defendant has moved to dismiss the information on the ground that Section 506 of Title V of the Communication Act, added thereto by an Act of 1946, contravenes the First, Fifth, Tenth and Thirteenth Amendments to the Constitution of the United States.

The court considers first the contention of defendant that Section 506 violates the due process of law protected under the Fifth Amendment in that it is so framed as to create indefiniteness and uncertainty in the definition of a criminal offense. The portion of the section here involved imposes a criminal penalty upon the use or threat to use pressure upon a licensed operator of a radio station

"to employ or agree to employ, in connection with the conduct of the broadcasting business of such licensee, any person or persons in excess of the number of employes needed by such licensee to perform actual services * * *"

There is no means, or guide, or standard by which the defendant may know "the number of employees needed." This is established by the licensee without prior knowledge upon the part of the person subjected to prosecution for violation of the section.

Such a provision in a criminal statute violates the established principle that—

"a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law." Connally v. General Construction Company, (1926) 269 U. S. 385.

A similar statement was more recently made in Lanzetta v. New Jersey, (1939) 306 U. S. 451, and a detailed analysis of other cases is found in 83 Lawyers' Edition, Annotation, pages 893–921.

The words "wilfully" used in paragraph (d) of this section does not make definite the undefined offense. This view is not contradictory to that of Mr. Justice Douglas in Screws v. Douglas, (1945) 325 U. S. 91, for he stated:

"* * * But where the punishment imposed is only for an act knowingly done with the purpose of doing that which the statute prohibits, the accused cannot be said to suffer from lack of warning or knowledge that the act which he does is a violation of the law. * * *" (P. 104.)

In that case the defendants had knowledge that they were committing an unlawful act, but under Section 506 here involved defendant cannot know whether he is doing that which the statute prohibits or is acting lawfully. This lack of knowledge is not due to ignorance as to existence of the statute. His guilt or innocence is subject wholly to the whim of others, and his position is that of the defendants in United States v. Local 807 of Teamsters, (1942) 315 U. S. 521, 532, regarding whom the United States Supreme Court said:

"The state of the mind of the truck owner cannot be decisive of the guilt of these defendants."

Life and liberty may not be imperilled by or be subject to such a frail and uncertain device as one man's opinion against another's. The will of an individual to make an act a crime or not, depending upon his own judgment, is abhorrent to our form of government.

It is the court's opinion, therefore, that subsection (1) of Section 506 (a) is patently defective in its failure to define with reasonable certainty the crime charged.

There are, however, other fundamental deficiencies in the act which must be considered.

8 Congress has plainly stated in this statute that if a licensee can be persuaded by means which place no constraint or coercion upon the licensee then the acts of the parties and the results accomplished are not prohibited. It is legal and not prohibited by any law for the licensee to employ more persons than it needed, without any agreement with or, in fact, against the desires of its employees or its representatives. The employment of more persons than are needed by the licensee is not condemned in this legislation; such act is not defined to be an evil which must be remedied; such conduct is not denounced or proclaimed to be illegal in any sense through all the wording of the statute. The only time it becomes a crime under this statute is when the employer refuses to agree. If an employee persists in trying to demonstrate his demand to other employees by means of a picket it becomes a crime. But if the employer agrees to hire fifty more employees than are needed, it is not a criminal offense because of the decision of the employer.

The information charges that one of the means employed by defendant to enforce his request that more persons be employed by the licensee was the "placing and causing to be placed a person as a picket in front of the place of business of said licensee." Can the hiring of additional employees which can be done legally by agreement of the licensee and the union, or by the licensee alone, be constitutionally denounced as illegal when done by the right of free speech as manifested by peaceful picketing?

There is in this case no charge of violence in picketing and therefore the placing of a picket must be regarded by this court as peaceful picketing. The Supreme Court of the United States in Carlson v. California, (1940) 310 U. S. 106 said:

"* * * publicizing the facts of a labor dispute in a peaceful way through appropriate means, whether by pamphlet, by word of mouth or by banner, must now be regarded as within that liberty of communication which is secured to every person by the Fourteenth Amendment against abridgment by a state."

It is this fundamental right that is here challenged as an unlawful means to procure the accomplishment of an admittedly legal objective. The court is of the opinion, therefore, that picketing where not accompanied by any force or violence, used merely for the purpose of disseminating the views of defendant and the members of the musicians union is a manifestation of the exercise

of the right of free speech and cannot be defined as illegal except under circumstances which warrant a restraint upon freedom of speech or where it is used for some unlawful purpose. It has been repeatedly and universally held that peaceful picketing is a form of speech and discussion that cannot under the First or Fourteenth Amendments be curtailed by any legislative enactment. Thornhill v. Alabama, 1940, 310 U. S. 88.

The information further charges attempts to coerce, compel and constrain employment by means of (1) causing three musicians to discontinue their employment; and (2) causing three musicians not to accept employment by such licensee.

There is no doubt as to the constitutional right to discontinue an employment or to refuse such employment. The Thirteenth Amendment accomplishes the purpose

"to make labor free, by prohibiting that control by which the personal service of one man is disposed of or coerced for another's benefit, which is the essence of involuntary servitude." Bailey v. Alabama, (1911) 219 U. S. 219.

As was said in Carpenters' Union v. Citizens Committee, (1928) 33 Ill. 225:

"Every man has a full freedom in the disposal of his labor according to his will, and workmen have a right to organize for the purpose of promoting their common welfare by lawful means. They may impose any condition of their employment which they may regard as beneficial to them, and, if not bound by contract, may abandon their employment at any time, either singly or in a body, with or without cause. They have the right to a free and open market in which to dispose of their labor."

9 Under the Thirteenth Amendment the right of any worker to leave his employment at will or for no reason at all is protected and that right is inviolate. The freedom to quit and refuse to undertake work may as readily be exercised through a group organization as individually.

It is further contended the statute violates the Fifth Amendment because it denies equal protection of the laws. It is fully recognized that there is no specific constitutional right to equal protection of the laws which restricts Congress; but it is true that "discriminatory legislation may be so arbitrary and injurious in character as to violate the due process clause of the Fifth Amendment." Detroit Bank v. United States, (1943) 317 U. S. 329.

The Circuit Court of Appeals for this Circuit recently said:

"Congress may not arbitrarily classify an act as something, the attributes of which it does not partake, Heiner v. Donnan, 285 U. S. 312, but it may always designate an act as coming within a certain category if in its inherent nature it may reasonably be said

to be endowed with the qualities of such category. In re Chicago, R. I. & P. Ry. Co., (1937) 90 F. (2d) 312, cert. den. Bankers Trust Co. v. Wise (1937) 302 U. S. 717.

The Fifth Amendment imposes a restriction upon Congress, not specific, but equally effective as to arbitrary classification. The guarantee of peaceful picketing is found in the specific guarantee of freedom of speech by the First Amendment; the guarantee of freedom to withdraw from employment or refuse to accept employment is found in the specific guarantee of the Fifth and Thirteenth Amendments.

This statute could be used to deprive the members of the musicians union of the right to quit work collectively as a means of enforcing their demands with reference to the making of a new contract. All other employees of this country have the right to quit work collectively in order to use their bargaining power; they have the right to strike in order to enforce their demands.

Broadcasting station employees are placed in a class separate and apart from those of all other employees in the United States. The statute does not apply to employees who are engaged in communication such as telephone or telegraph companies, but is definitely limited in its application to broadcasting station employees and no others. As a result the broadcasting station employees are singled out and held to a more rigid rule than any other employees; they have not the same rights and privileges as other employees; they are penalized and prohibited in their contractual negotiations, while other employees enjoy the right which is denied them. A penalty which applies uniquely to broadcasting station employees and no others; a prohibition which relates solely to contracts between these same employees and no others; an inhibition which defines lawful acts as unlawful when applied to these employees and no others cannot survive the constitutional test. This segregation and classification plainly falls within the arbitrary group of class legislation.

The Court finds it necessary to hold that the statute here involved in the application here sought to be made violates the Fifth Amendment because of indefiniteness and uncertainty in the definition of a criminal offense; violates the First Amendment by its restriction upon freedom of speech by peaceful picketing; violates the Fifth and Thirteenth Amendment by its restriction upon employment of labor; and violates the Fifth Amendment by an arbitrary classification as between employers and employees and as to other communication industries.

Whether or not the objectives sought to be attained by this statute are or are not economic evils which should be restrained or suppressed are questions not within the province of this court. This court does not hold that Congress is powerless to act or that

the declared objectives of this law are beyond the reach of
10 federal legislative control. The only question before the court is the constitutional aspect of this statute as it was written by Congress. On this question the court is of the opinion that this statute is unconstitutional for the reasons above stated.

An order may be entered dismissing the information and discharging the defendant.

Walter J. LaBuy,
WALTER J. LABUY,
Judge, United States District Court.

11 In the District Court of the United States for the Northern District of Illinois, Eastern Division

Present: Honorable WALTER J. LA BUY, District Judge

No. 46-CR-357

UNITED STATES OF AMERICA
vs.
JAMES C. PETRILLO

Order dismissing information

DECEMBER 2, 1946.

This cause coming on for disposition on the defendant's motion to dismiss the Information filed herein against him come the parties by their attorneys respectively and the Court being fully advised in the premises it is

Ordered that the Criminal Information filed herein be and the same is hereby dismissed and that the defendant James C. Petrillo be and he is hereby discharged from further prosecution under said Information.

12 In the District Court of the United States for the Northern District of Illinois, Eastern Division

No. 46-CR-357

UNITED STATES OF AMERICA, PLAINTIFF
v.
JAMES C. PETRILLO, DEFENDANT

Notice of appeal

Filed Dec. 26, 1946

The United States of America, by George T. Washington, Acting Solicitor General, and Theron L. Caudle, Assistant Attorney

General, hereby appeals to the Supreme Court of the United States from the judgment of the United States District Court for the Northern District of Illinois (Eastern Division), entered December 2, 1946, dismissing the information against the defendant, James C. Petrillo, which charged him with having violated the Act of April 16, 1946, in that he wilfully attempted to coerce the licensee of a radio station to employ persons not needed by said licensee to perform actual services, on the ground that the statute is unconstitutional.

Dated December 26, 1946.

GEORGE T. WASHINGTON,
Acting Solicitor General,
Department of Justice, Washington, D. C.
THERON LAMAR CAUDLE,
Assistant Attorney General,
Department of Justice, Washington, D. C.

[Certificate of Mailing attached.]

13 CERTIFICATE OF MAILING

I, Roy H. Johnson, Clerk of the United States District Court, for the Northern District of Illinois, Eastern Division, keeper of the Seal and Records of said Court, do hereby certify that on the 27th day of December 1946, in accordance with Rule 73 (b) of the Rules of Civil Procedure for District Courts of the United States, I did cause to be mailed a copy of the foregoing Notice of Appeal to the following attorneys of record: David Katz, 175 W. Washington St., Chicago 2, Ill.

[SEAL] ROY H. JOHNSON,
Clerk.

14–20 In the District Court of the United States

[Title omitted.]

Designation of record on appeal

Filed December 26, 1946

The Clerk will please prepare and certify to the Clerk of the Supreme Court of the United States a transcript of the record on appeal in this case and include therein the following:

1. Transcript of docket entries.
2. The criminal information.
3. Motion of defendant to dismiss the information.
4. The opinion of the district court, entered December 2, 1946.

5. The order of the district court, entered December 2, 1946, dismissing the information and discharging the defendant.
6. Notice of appeal.
7. Statement as to jurisdiction.
8. This designation.

THERON LAMAR CAUDLE,
Assistant Attorney General,
Department of Justice, Washington, D. C.

21 In United States District Court

THE UNITED STATES
vs.
JAMES C. PETRILLO

Case No. 46CR357

Attorneys—For U. S.: J. Albert Woll. For defendant: Jos. A. Padway and Henry Kaiser, 736 Bowen Bldg., Washington, D. C. (5); Henry A. Friedman, 521 Fifth Ave., New York City; David Katz, 175 W. Washington St., Chicago, Ill.

Vio: Section 506 Federal Communications Act of 1934 as amended.

22

Date	Proceedings	Clerk's fees	
		Plaintiff	Defendant
6-13-46	Filed criminal information, JS2	$15	U. S.
6-13-46	Order to issue summons returnable at 10 a. m. Friday, June 14, 1946, before Judge LaBuy—Barnes, J		
6-13-46	Issued summons and copy, D		
6-14-46	Filed bond		
6-14-46	Deft given until July 15, 1946, to file motions raising defenses or objections, supporting brief to be filed on or before Aug. 5, 1946, and reply brief to be filed on or before Sept. 9, 1946. Bond fixed at $1,000, LaBuy, J., D		
6-20-46	Filed summons retd. executed, $2, D		
7-15-46	Filed motion to dismiss the information by defendant, w		
8- 2-46	By stipulation deft's brief in support of motion to dismiss to be filed by Aug. 15, 1946, answering brief by Sept. 19, 1946, g		
8- 2-46	(Draft) Filed stipulation, Campbell, J., g		
8- 2-46	Mailed notice to attorneys, g		
8-15-46	Appendix to memorandum brief in support of motion to dismiss, filed		
8-15-46	Memorandum brief in support of motion to dismiss, filed		
9-11-46	Filed stipulation		
9-11-46	By stipulation time for Government to file brief in opposition to motion to dismiss extended from Sept. 19 to Sept. 30, 1946, draft—LaBuy, J		
	Mailed notice to attorneys Sept. 11, 1946, D		
9-30-46	Filed brief in opposition to motion to dismiss and hearings before the committee on interstate and foreign commerce, etc., with appendix "C"		
10- 8-46	Leave given deft to file reply brief in re motion to dismiss within 3 days and arguments on said motion set for Nov. 4, 1946, LaBuy, J		
	Mailed notice to attorneys Oct. 8, 1946, D		
10-11-46	Filed notice of motion		
10-11-46	Filed petition of American Civil Liberties Union		
10-11-46	Motion of American Civil Liberties Union for leave to filed brief as amicus curiae denied, LaBuy, J., D		
10-31-46	Filed supplemental memorandum on separability		
10-31-46	By agreement leave given Government to file instanter supplemental memorandum, LaBuy, J		
	Mailed notice to attorneys Oct. 31, 1946, D		

Date	Proceedings	Clerk's fees	
		Plaintiff	Defendant
23			
11- 4-46	Arguments heard and concluded on motion to dismiss and said motion taken under advisement—LaBuy, J		
	Mailed notice to attorneys Nov. 5, 1946, D		
12- 2-46	Filed opinion		
12- 2-46	Enter order dismissing the information and discharging the defendant, LaBuy, J., JS3		
	Mailed notice to attorneys Dec. 2, 1946, D		
12-17-46	Filed transcript of proceedings had before Judge LaBuy on Oct. 11, 1946, d		
12-26-46	Filed notice of appeal	5	U. S.
12-26-46	Filed designation of record on appeal		
12-26-46	Mailed copy of notice of appeal with statement of docket entries to Supreme Court of the U. S., Washington, D. C., B		
12-27-46	Mailed copy of notice of appeal to David Katz, 175 W. Washington, Chicago 2, Ill		
12-27-46	Filed proof of service of designation of record, w		
12-26-46	Filed statement as to jurisdiction, w		

24 [Clerk's certificate to foregoing transcript omitted in printing.]

25 In the Supreme Court of the United States

October Term, 1946

No. 954

Statement of points to be relied upon and designation of record

Filed February 5, 1947

Pursuant to Rule 13, paragraph 9, of the rules of this Court, the appellant states that it intends to rely on the following points. The district court erred:

1. In granting the motion to dismiss the indictment.

2. In holding unconstitutional the Act of April 16, 1946, Public, No. 344, 79th Cong., 2d sess., 47 U. S. C. 506.

3. In holding that the statute imposes a standard of criminal liability too vague and uncertain to satisfy the due-process clause of the Fifth Amendment.

4. In holding that, insofar as it prohibits the enforcement of a demand for the employment of additional persons by means of peaceful picketing, the statute violates the right of free speech guaranteed by the First Amendment.

5. In holding that any penalization of peaceful picketing necessarily constitutes a violation of the First Amendment.

26 6. In holding that, insofar as the statute prohibits enforcement of a demand for the employment of additional persons by causing employees to discontinue or refuse employ-

ment by the licensee of a radio station, the statute violates the Thirteenth Amendment.

7. In holding that the punishment of a person who causes others not to perform labor infringes that person's rights under the Thirteenth Amendment.

8. In holding that any penalization of the right to strike or call a strike necessarily constitutes a violation of the Thirteenth Amendment.

9. In holding that the statute violates the due process clause of the Fifth Amendment by arbitrarily treating employees of broadcasting stations as a class and denying to them rights afforded employees in other industries.

Appellant deems the entire record as filed in the above-entitled case, necessary for the consideration of the points relied upon.

George T. Washington,
GEORGE T. WASHINGTON,
Acting Solicitor General.
HENRY KAISER.

Service acknowledged this 5 day of February 1947.

[File endorsement omitted.]

27 Supreme Court of the United States

No. 954. October Term, 1946

Order noting probable jurisdiction

March 3, 1947.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

[Endorsement on cover:] Enter the Attorney General. File No. 51818. Northern Illinois, D. C. U. S. Term No. 954. The United States of America, Apellant, vs. James C. Petrillo. Filed January 27, 1947. Term No. 954 O. T. 1946.

U. S. GOVERNMENT PRINTING OFFICE 1947